



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161233

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced Petitioner's FoodShare allotment after determining that he was not entitled to credit for heating costs included in his rent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's FoodShare case was reviewed on September 15, 2014. At that time he reported that his utilities were included in his rental obligation.

3. On September 16, 2014 the agency sent Petitioner a Notice of Decision that informed him that his FoodShare allotment was decreasing effective October 1, 2014 from \$120.00 to \$16.00. It was sent to Petitioner at the above address.
4. In determining Petitioner's FoodShare allotment the agency used unearned income of \$804.78, rent of \$300.00 and credited him with a standard deduction of \$155.00. These amounts were the same as used when the allotment was \$120.00. Thus the only change in the allotment calculation is the discontinuance of the utility allowance.

DISCUSSION

The size of a FoodShare allotment depends upon household size and net income. Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 *CFR* § 273.9(d). The agency reduced Petitioner's FoodShare allotment from \$120 to \$16 per month, mainly because recipients no longer receive a utility allowance if their utilities are included in their rent. *The Agriculture Act of 2014, Title IV, § 4006; 7 C.F.R. § 273.9(d)(6)(ii); 7 CFR § 273.9(d)(3) referring to 7 CFR § 271.2.* His allotment increased to \$16 per month in October 2014.

Petitioner's gross income consists state and federal SSI payments totaling \$804.78 per month. He is entitled to the \$155 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook (FSH)*, §§ 4.6.2 and 8.1.3; 7 *CFR* § 273.9(d)(1). He is not entitled to an earned income deduction because disability payments are not considered to be earned income. *See 7 CFR § 273.9(d)(2).* The only other deduction he is potentially entitled to is the shelter deduction, which equals the amount that housing costs exceed 50% of the net income remaining after all other deductions are subtracted from gross income.

Those who pay their own heat get a \$450 standard utility allowance as part of their shelter deduction. *FoodShare Wisconsin Handbook (FSH)*, § 4.6.7; 7 *C.F.R. § 273.9(d)(6)(ii); FSH, § 8.1.3.* Wisconsin had been granting the utility allowance to those whose utilities were included in their rent by granting them \$1 annual energy assistance payment, but the current farm bill requires households whose heating costs are included in their rent to receive at least \$20 a year in heating assistance to qualify for utility allowance. Most states that had provided \$1 a month in energy assistance raised this amount \$20, but Wisconsin did not. There is a \$30 telephone allowance for those who do not pay for their own heat but have a telephone bill. *Id.*

Without a utility obligation Petitioner's shelter cost is his rent of \$300.00. Deducting the \$155 standard allowance from his \$804.78 gross income, leaves him with \$649.78. Half of this is \$324.89. As Petitioner's shelter expense is less than \$324.49 there is no shelter deduction.

Subtracting the \$155.00 standard deduction from Petitioner's \$804.78 leaves net income of \$649.78. The FoodShare allotment for a one-person household, the size of the Petitioner's, with this income was \$15 until October 1, 2014, and \$16 after this. *FSH, § 8.1.2.* I conclude that the agency correctly determined Petitioner's FoodShare allotment.

Finally, Petitioner complains that he was not given enough notice as to this change. A notice of negative action must be sent 10 days prior to the action. *FSH, § 6.3.1.* The September 16, 2014 Notice of Decision complies with this standard.

CONCLUSIONS OF LAW

1. That Petitioner is not entitled to the Heat Utility Standard Allowance because his heat and electricity are included in his rent.
2. That the agency correctly determined Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of December, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability